

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SIETEL SINGH GILL, individually and on behalf
of other similarly situated individuals,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE, and NFL
ENTERPRISES LLC,

Defendants.

Case No. 1:21-cv-01032-PAE

JOINT STIPULATION OF UNDISPUTED FACTS

In accordance with the Court’s April 5, 2022 Order, Defendants NATIONAL FOOTBALL LEAGUE (the “NFL”), and NFL ENTERPRISES LLC (“NFLE”), (collectively, “Defendants”) along with Plaintiff SIETEL SINGH GILL (“Gill” or “Plaintiff”), by and through their respective attorneys, respectfully submit the following joint statement of undisputed facts. The parties acknowledge that because there are additional facts that are not included herein, this joint statement is not to be construed as a complete recitation of all the facts relevant to this action.

The Parties

1. Plaintiff Sietel Singh Gill is and was at all relevant times a resident and citizen of New South Wales, Australia.
2. Defendant the NFL is an unincorporated association founded in 1920, the members of which are 32 professional football clubs. The NFL maintains a principal place of business at 345 Park Avenue, New York, NY 10154.

3. Defendant NFLE is a limited liability company organized under the laws of the State of Delaware and maintains a principal place of business at 345 Park Avenue, New York, NY 10154.

Game Pass International Subscription

4. NFL Game Pass International is a digital platform through which subscribers in various markets outside the United States can access and view NFL related content, including on-demand and live stream access to games throughout the NFL season, including playoffs and the Super Bowl.

5. Subscribers can subscribe to several different NFL Game Pass International packages, which may affect the availability of some services, such as access to the playoffs and Super Bowl. The Game Pass International subscription provides subscribers access to the Game Pass International service for the NFL season.

6. **Game Pass Third Party Operators or Vendors** On or around September 2013, NFL Game Pass International service was provided by NFLE, through a third-party vendor/operator called NeuLion.

7. NFLE and NeuLion entered into a NeuLion Service Order Form and Terms of Service effective as of June 1, 2012. It states in part, “Any and all Subscription Services hereunder will be labeled ‘white label’ services, which will be exclusively branded by NFL without any attribution to NeuLion except to the extent pre-approved in writing by Company.” It further states, “Except for Company’s Affiliates, this Agreement is entered solely by and between the Parties and shall not be deemed to create any rights or obligations to any third parties.”

8. NFLE, through its vendor/operator NeuLion, provided NFL Game Pass International each season until the 2017 NFL season, under the NFL brand as required by the contract.

9. Starting with the 2017 NFL Season, NFL Game Pass International in Australia began being operated by Perform Media Channels, LTD, through a contract with NFL International LLC (“NFLI”), an affiliate of NFLE. The contract was dated April 10, 2017. Ex. A.

10. On June 18, 2018, NFLI and OverTier Operations entered into an agreement whereby OverTier Operations would operate NFL Game Pass International in Australia. Ex. B.

11. On April 1, 2019, NFL International Licensing Inc. (“NFLILI”), an affiliate of NFLI, entered into an amended agreement with OverTier Operations (the “2019 Amended Agreement”), whereby NFLILI was substituted for NFLI. Ex. C.

12. The 2019 Amended Agreement expanded OverTier Operation’s territory over the NFL Game Pass International service, to include Australia for the 2019 NFL Season.

13. Accordingly, starting with the 2019 NFL season, OverTier Operations operated the Game Pass International subscription service for various countries, including in Australia.

Gill’s Subscription to Game Pass International

The 2013 NFL Season

14. The Subscription Products Terms and Conditions applicable to the Game Pass International subscription service for the 2013 NFL season (the “2013 Subscription Products Terms and Conditions”) went into effect on June 8, 2012, and were updated on July 29, 2013. Ex. D.

15. Plaintiff Gill stipulates that when he entered his subscription for NFL Game Pass International on September 10, 2013, he agreed to the 2013 Subscription Products Terms and Conditions.

16. The 2013 Subscription Products Terms and Conditions stated, in part in the section titled, "Billing and Automatic Renewal Policies for Certain Subscription Services," at paragraph 3(f):

For Subscription Products billed on an annual basis (e.g., NFL Game Pass – Season Plus Subscription, NFL Game Rewind – Season Plus Subscription) the term begins when you purchase and ends before the start of the following year's NFL Preseason (approximately July 31), with one-time billing immediately following your purchase. If you elected to pay in monthly installments, you agree to pay the total cost during the term of the Subscription Product you selected in the number of equal installments identified during your purchase. The first installment will be billed immediately upon your subscription and the remaining number of installments will be billed on a monthly basis thereafter until your total subscription price has been paid. If you cancel your Subscription Product before making all of the installment payments, you agree to pay the remaining unpaid balance of the Subscription Product you selected. Your annual subscription will automatically renew on approximately August 1 of at either the previous year's full season rate for the applicable Subscription Product or the current full season rate for the applicable Subscription Product, whichever is lower.) To cancel the annual automatic renewal feature, you can send an e-mail to gamepass.support@nfl.com, call customer support at (407)-936-0867 between the hours of 10:00 am and 10:00 pm ET, chat with a customer support representative by clicking the "Online Chat" button in the upper-right corner of the FAQ <http://gamepass.support.nfl.com>, or use the online form found on your "My Account" page."

17. Furthermore, the 2013 Subscription Product Terms and Conditions state at paragraph 3(i):

If you have purchased a Season Plus Subscription, Season Subscription, or Follow Your Team subscription enrolled in the automatic renewal feature and your access to such Subscription Product is cancelled by you within 30 days of the automatic renewal date, we will make a reasonable effort to refund to the payment method (e.g., to your credit card) used to subscribe to such Subscription Product an amount equal to the total amount you paid for access to the Subscription Product in the current term of your subscription.

18. The 2013 Subscription Products Terms and Conditions stated, in part, “We have contracted with a third party (currently, NeuLion, Inc.) to operate the above listed Subscription Product, on our behalf.”

19. On or around September 10, 2013, Gill purchased the Game Pass International Season Plus package for the 2013 NFL season.

20. Gill received an email from nflgamepass@neulion.com upon signing up for Game Pass International on September 10, 2013, which contained a section entitled, “Your Subscription,” where it described the “Service” as “NFL Game Pass (Game Pass Season Plus Subscription).” The email also stated, among other things, the following: “Dear Seitel, Thank you for your recent purchase of NFL Game Pass! Your subscription is now active. ... Your NFL Game Pass subscription for the 2013 season will end at 11:59 pm GMT on 31 Jul 2014.” Ex. E.

21. In 2015 and 2016, the Game Pass charge on Gill’s credit card statement read “NEULION/NFL PRODUCT.” Ex. F.

22. Before the end of July 2017, the NFL sent an email to Gill informing him that he needed to update his credit card information and reconfirm that he wanted to be “auto-renewed for the 2017 NFL Season.” Ex. G.

23. The 2017 Terms and Conditions are attached. Ex. H.

24. On November 4, 2018, Gill submitted a web form ticket reporting a technical issue he had with his Game Pass International service. Within his web ticket, Gill stated he had “a paid membership till mid-2019 with NFL Gamepass.”

25. On June 19, 2019, Gill received an email regarding the changes to the Game Pass International subscription service for the upcoming 2019 NFL season. Ex. I.

26. The June 19, 2019, email stated in part, “This offseason we’re updating our service provider as part of our commitment to providing a premium NFL experience to our fans around the world.” The email was signed, “NFL Game Pass,” and contained a footer which stated in part, “For further details on NFL Game Pass International Terms and Conditions, including billing, please click here.” Underneath the link to the Terms and Conditions was OverTier Operations’ name and P.O. Box information.

27. The Subscription Product Terms that were hyperlinked at the bottom of the June 19, 2019 email were for subscriptions to the then-upcoming 2019 NFL season and stated, in part, “Who we are. Overtier Operations who is the official licensee of the content material and Deltatre S.p.A. who operates the platform and deals with customer queries. As a customer you are contracted with both entities.” These Subscription Product Terms are attached. Ex. J.

28. On July 1, 2019, Gill received another email regarding his Game Pass subscription. Ex. K. It stated in part, “As a reminder from our previous email, we’re updating our service provider as part of our commitment to providing a premium NFL experience to our fans around the world.” The email continued stating in part, “we wanted to let you know that your NFL Game Pass subscription is set to auto-renew in 31 days. Your subscription fee will be billed on or around August 1, 2019 at the same 2018 Season Plus full price in your market, 274.99 AUD.” The email continued on, stating in part, “Click here to update your payment preferences/details. However, if you wish to cancel your subscription, you can manage your preferences here.” The email also stated, “If you wish to continue your NFL Game Pass subscription, no action is required.” The email was signed, “NFL Game Pass” and also contained a footer which stated in part, “For further details on NFL Game Pass International Terms and Conditions, including billing, please click

here.” Following the link to the Subscription Product Terms was OverTier Operations’ name and P.O. Box information.

29. Gill states that he did not review the Subscription Product Terms accessible through the hyperlink.

30. On July 16, 2019, Gill received another email regarding his Game Pass subscription. Ex. L. It stated in part, “With the NFL preseason kicking off in less than 3 weeks’ time, we wanted to remind you that you will need to update your app(s) in order to watch the action this season. As previously shared, you will have until July 25, 2019 to update your existing NFL Game Pass app(s).” The bottom of the email stated in part, “For further details on NFL Game Pass International Terms and Conditions, including billing, please click here.” Following the link to the Terms and Conditions was OverTier Operations’ name and P.O. Box information.

31. Gill stated that he did not review the Terms and Conditions accessible through the hyperlink in this email or contained in any other email or Game Pass communication.

32. On August 2, 2019, Gill’s payment for his Game Pass International subscription for the 2019 season was received. Ex. M.

33. The billing system used by Overtier reflected, for Gill, “New Subscription Created” on 06/05/2019 and “Renewal,” on 08/02/2019. After the payment, an automatically generated email went to Gill stating, “your NFL Game Pass subscription has been processed on 08/02/2019... Sincerely, NFL Game Pass.” Ex. N.

34. On August 28, 2019, Gill received another email regarding his Game Pass subscription. Ex. O. It stated in part, “We’re delighted to welcome you back to NFL Game Pass for the start of the 2019 season... We’ve put together a quick guide to help you get the most out of your NFL Game Pass Pro subscription. Your Season Pro subscription will run until 1st August

2020 where you will have access to the entire NFL season at your fingertips.” The email continued in the footer, stating, “For further details on NFL Game Pass International Terms and Conditions, including billing, please click here.” Following the link to the Terms and Conditions was a hyperlink with the text “Want to unsubscribe or change your details?” After that, the email included OverTier Operations’ name and P.O. Box information.

35. Gill stated that he did not review the Terms and Conditions accessible through the hyperlink in this email or contained in any other email or Game Pass communication.

36. On October 29, 2019, Gill received another email regarding his Game Pass subscription. Ex. P. It began with the heading “**Updates to Terms and Conditions**” followed by a message stating in part,

We are writing to let you know about updates we are making to our Terms and Conditions. These updates apply to all existing NFL Game Pass Australian subscribers only and take effect on October 29, 2019. We invite you to please review the new Terms and Conditions in full here.” The email continued, stating, “If you continue to use our products and services on or after October 29, 2019, you are agreeing to the updated Terms and Conditions.”

37. The updated the 2019 Terms and Conditions that were hyperlinked to the October 29, 2019 email included changes to Clause 14 to ensure compliance with certain Australian marketing laws. These subscription terms are attached. Ex. Q.

38. Clause 2.1 of the updated 2019 Terms and Conditions remained the same as the earlier 2019 Terms and Conditions, which stated “Who we are. Overtier Operations who is the official licensee of the content material and Deltatre S.p.A. who operates the platform and deals with customer queries. As a customer you are contracted with both entities.”

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Dated: May 9, 2022

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